IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.688 OF 1989

Maharashtra State Road
Transport Corporation, Bombay ...Appellant

Vs.

Babaji Govind Parit ...Respondent

Mr.C.M.Lokesh i/b Mr.G.S.Hegde for the Appellant
Mr.H.E.Palwe for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 22,2006.

ORAL JDUGMENT:

1. I have heard the submissions of the learned Advocate for the Appellant yesterday. With a view to appreciate the submissions made by the learned Advocate for the Appellant, it will be necessary to refer to the facts of the case in brief.

2. The Appellant is the Maharashtra State Road Transport Corporation. The Appellant is the Opponent No.1 in a Claim Petition filed under Section 110-A of the Motor Vehicles Act, 1939 by the Respondent herein. The Respondent at the relevant time was an employee of the Appellant. On 9th November 1987, the Respondent along the one of his friends viz. Shri Shankar Bhagwan Buwa was proceeding on a Moped towards village Utagi. According to the case of the Respondent, the moped was being driven by the left side of the road. After the Respondent and the said Buwa had crossed

the village Kolgiri, the bus owned by the Appellant came from the rear side and gave a dash to the moped while making an attempt to overtake the said moped. The case of the Respondent is that the driver of the bus was driving the bus in a rash and negligent manner. As a result of the impact, the Respondent was thrown away. The Respondent suffered severe injuries.

3. The age of the Respondent was about 52 years and he was drawing a salary of Rs.2780/- p.m. The Respondent suffered multiple fractures and other injuries. The employment of the respondent was terminated with effect from 22nd June 1988 as the Respondent became disabled as a result of the injuries sustained in the accident. The learned Member of the Tribunal awarded compensation of Rs.1,64,732/- together with interest at the rate of 12% p.a. in favour of the Respondent.

4. The learned Advocate for the Appellant submitted that the evidence of the driver of the bus clearly establishes that the accident occurred due to negligence on the part of the person who was driving the moped. He submitted that the Respondent who was occupying the pillion seat on the moped gave a signal by his hand allowing the bus to overtake the moped. After noticing the signal, the driver of the S.T.Bus attempted to overtake the moped. The driver of the moped suddenly turned the moped firstly on his right side and

thereafter towards the direction of the bus. He submitted that these acts of negligence were on the part of the driver of the moped. Without prejudice to the aforesaid contention, he submitted that it was a case of the contributory negligence.

5. I have considered the submissions made by the learned Counsel for the Appellant. In the Claim Petition, the Respondent has stated that the moped was being driven in a moderate speed by the left side of the road and at that time the S.T.Bus came from the rear side. Without giving him warning, the driver of the bus tried to overtake the moped. It is stated in the Claim Petition that the driver of the S.T.Bus was driving the bus in a very high speed. While making an attempt to overtake the moped, the bus dashed on the rear side of the moped. A Written statement was filed by the Appellant which contains mere denials. It is stated in the written statement that the accident occurred due to negligence of the person who was driving the moped. By filing pursis at Exh.15, the driver of the bus adopted the written statement of the Appellant.

6. When that the driver of the bus stepped into witness box, he tried to make out an altogether new case. He stated that he was personally knowing the present Respondent. When he saw the moped, he gave a signal by blowing horn. After hearing the horn, the Respondent who was the pillion rider

gave a signal by hand indicating the driver of the S.T.Bus to go ahead. While the bus was overtaking the moped, the driver of the moped suddenly turned towards the side of the bus. When the driver of the bus attempted to stop the bus, the moped dashed against the left front side of the bus. All this was not at all pleaded in the written statement of the Appellant-Corporation. By way of an afterthought, the driver of the bus came out with this story. It is pertinent to note here that the material on record does not support the said version of the driver of the S.T.Bus. The panchnama which is exhibited on record clearly shows that the impact was on the rear portion of the moped. If what is stated by the driver of the S.T.Bus was correct, the impact could not have been on the rear side but it should have on the front side of the moped. Moreover, the driver of the moped suffered minor injuries as compared to the present Respondent who suffered major injuries while sitting on the pillion seat. It is not the case of the driver of the bus that the person who was driving the moped gave a signal to the driver of the bus to go ahead. The signal according to the driver of the bus was given by the pillion rider. Assuming that such signal was given, it was not proper on the part of the driver of the bus to overtake the moped when no such signal was given by the person plying the moped. Apart from the fact that the driver of the bus came out with an altogether new version, the material on record does not support the said version of the driver of the bus.

8. In view of such stand taken by the driver of bus which required to be discarded, the Tribunal has held that the accident occurred due to negligence of the driver of the bus. After having perused the record, I find no reason to interfere with the said finding of the Tribunal.

9. It must be noted here that the Appellant-corporation challenged the Award made in favour of the driver of the moped by preferring First Appeal no.689 of 1989. The claim petitions of the Respondent and the driver of the moped were decided by a common Judgment. By order dated 1st August 1989 the said Appeal was dismissed by a Division Bench of this Court. It is true that while dismissing the Appeal, this court observed that the amount awarded is too small. Nevertheless the fact remains that the finding of negligence against the driver of the bus has been confirmed by this Court.

10. The Respondent suffered fracture of both legs. He also suffered injuries on his hand, forehead and on upper portion of eyes. He lost his employment on account of disability suffered in the accident. Though there was no specific challenge before me to the quantum of compensation, I have examined the finding of the Tribunal on this aspect. I find that the compensation awarded is reasonable and is consistent with the evidence on record.

11. There is no merit in the Appeal and the same is dismissed with no order as to costs.

Judge.